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BEFORE THE ARIZONA CORPORATION

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ARIZONA CORPORATION COMMISSION  
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COMMISSIONERS

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF  
GRANITE MOUNTAIN WATER COMPANY,  
INC. FOR APPROVAL OF A RATE INCREASE.

DOCKET NO. W-02467A-09-0333

IN THE MATTER OF THE APPLICATION OF  
GRANITE MOUNTAIN WATER COMPANY,  
INC. FOR APPROVAL OF FINANCINGS.

DOCKET NO. W-02467A-09-0334

IN THE MATTER OF THE APPLICATION OF  
GRANITE MOUNTAIN WATER COMPANY,  
INC. FOR AUTHORITY TO INCUR LONG-TERM  
DEBT.

DOCKET NO. W-02467A-10-0483

PROCEDURAL ORDER

**BY THE COMMISSION:**

This case concerns requests made by Granite Mountain Water Company, Inc. ("GMWC") for modification of two different Commission decisions: Decision No. 72294 (May 4, 2011) and Decision No. 72377 (May 27, 2011). Decision No. 72294 extended compliance deadlines established in Decision No. 71869 (September 1, 2010).<sup>1</sup> Decision No. 72377 authorized long-term debt in the amount of \$181,320 for specific water system improvements. At the Open Meeting on November 8, 2012, the Commission opened an A.R.S. § 40-252 proceeding to consider GMWC's requests for modification and directed the Commission's Utilities Division ("Staff") to prepare a Staff Report.

Within the six months thereafter, the dockets for Decision Nos. 72294 and 72377 were

<sup>1</sup> Decision No. 71869 established GMWC's current rates and charges and, *inter alia*, ordered the following: Granite Mountain Water Company, Inc. shall complete one of the following, within 18 months after the effective date of this decision, to address its inadequate storage capacity issue:

- a. Drill a replacement well to replace its existing Well No. 5 (ADWR #55-622083), or
- b. Construct and install a 110,000-gallon storage tank.

The Decision further ordered GMWC, for either option, to file an Approval to Construct ("ATC") within six months after the Decision (by March 1, 2011) and to file an Approval of Construction ("AOC") within 18 months after the Decision (by March 1, 2012). Per the Decision, replacement Well No. 5 had an expected production capacity of 65 GPM, and Staff supported GMWC's plan to drill replacement Well No. 5 and believed that replacement Well No. 5's anticipated 65 GPM capacity would allow GMWC to adequately serve its existing customers and 79 additional customers.

1 consolidated, an initial Staff Report and Supplemental Staff Report were filed, and GMWC made  
2 responsive filings altering its requests.

3 On May 9, 2013, a Procedural Order was issued scheduling an evidentiary hearing to  
4 commence on June 10, 2013, and requiring the filing of direct testimony and responsive testimony by  
5 May 31, 2013, and June 7, 2013, respectively. The Procedural Order further required that the parties'  
6 direct testimony address, at a minimum, specific enumerated questions.

7 On May 30, 2013, Staff filed a Request for Extension, stating that GMWC had sent Staff a  
8 letter describing actions GMWC intended to take to be responsive to the May 9, 2013, Procedural  
9 Order and that GMWC had indicated to Staff that it needed additional time. Staff stated that it did  
10 not object to the request for additional time. Staff attached the GMWC letter, which stated, *inter alia*,  
11 that "[a]n amended request to modify decisions based upon this letter will be prepared and filed with  
12 the exhibits as soon as we have the exhibits and prepared plans for the well and tank are approved by  
13 the engineer." In the Request, Staff asked for a delay to file direct testimony, but did not specify the  
14 duration of the requested delay.

15 GMWC did not make a filing in response to the Request.

16 On June 4, 2013, Staff filed a Modification to Procedural Schedule, stating that Staff had met  
17 with GMWC on May 31, 2013, and that GMWC had indicated that it needed at least an additional 60  
18 days. Staff requested that the testimony filing deadlines be extended by at least 60 days and that the  
19 date for hearing likewise be extended by at least 60 days.

20 On June 5, 2013, a Procedural Order was issued vacating the June 10, 2013, hearing;  
21 scheduling an evidentiary hearing to be held on September 23, 2013; and establishing pre-hearing  
22 filing requirements and deadlines for both GMWC and Staff, including a requirement for each to  
23 include in its filings responses to the questions posed in the Procedural Order of May 9, 2013, along  
24 with copies of pertinent supporting documentation, and the party's position and rationale concerning  
25 whether an evidentiary hearing should be held.

26 On August 5, 2013, GMWC filed an Amended Request to Modify Decisions, in which  
27 GMWC stated that it intended to obtain a property referenced as the "Short Spur property," which  
28 had an existing domestic well (to be called Well No. 6) and to have Well No. 6 converted to a

1 production well. GMWC further stated that it intended to purchase a prefabricated 50,000-gallon  
2 storage tank and to install the storage tank on the hill beside GMWC's two existing storage tanks.  
3 GMWC requested the following: (1) that Decision No. 71869 be modified to allow GMWC to add a  
4 new production well and a 50,000-gallon storage tank; (2) that Decision No. 72377 be modified to  
5 authorize long-term debt up to \$196,032, with the authorization expiring no sooner than June 1, 2014;  
6 and (3) that GMWC's compliance item requirements be extended to comply with the Commission's  
7 ruling on GMWC's request for an extension of time on Decision No. 72294. GMWC did not provide  
8 any recommendation regarding whether an evidentiary hearing was needed and did not explicitly  
9 respond to a number of the questions posed in the Procedural Order of May 9, 2013.

10 On August 16, 2013, GMWC filed a Supplement to Amended Request to Modify Decisions,  
11 providing copies of an ADEQ Drinking Water Source Approval Form for Well No. 6, water testing  
12 results for Well No. 6, an August 2013 Water Supply and Fire Flow Design Report, and an August  
13 2013 letter from the Central Yavapai Fire District Fire Marshal.

14 On September 5, 2013, Staff filed a Staff Report for GMWC's Request to Modify Decision  
15 Nos. 71869 and 72377 ("New Staff Report"). In the New Staff Report, Staff addressed engineering  
16 issues, but did not analyze or make any recommendation concerning GMWC's requested increase in  
17 financing authority. Staff stated that GMWC will have adequate production and storage capacity if  
18 Well No. 6 and the new 50,000-gallon storage tank are added to GMWC's system; Staff raised and  
19 did not appear to resolve the issue of GMWC's compliance with Yavapai County fire flow  
20 requirements; and Staff recommended that GMWC file with Docket Control, as compliance items, by  
21 March 1, 2014, the Approvals of Construction issued by ADEQ for Well No. 6 and the new 50,000-  
22 gallon storage tank. Staff did not provide a recommendation regarding whether an evidentiary  
23 hearing was needed and did not explicitly respond to the questions posed in the Procedural Order of  
24 May 9, 2013.

25 On September 11, 2013, a Procedural Order was issued vacating the evidentiary hearing  
26 scheduled for September 23, 2013, and scheduling a procedural conference to be held in this matter  
27 instead. The Procedural Order further directed the parties to be prepared, at the procedural  
28 conference, to identify the modifications each party believed should be made to Decision Nos. 71869,

1 72294, and 72377; to identify the extent to which the parties' positions differed; to explain whether  
2 the parties' differences could be reconciled prior to hearing and, if so, to what extent; and to provide  
3 a joint proposal for how the matter should go forward.

4 On September 23, 2013, the procedural conference was held as scheduled. Staff appeared  
5 through counsel, and GMWC appeared through Arden W. Barney, Operations Manager, who  
6 explained that GMWC's counsel, Paul D. Levie, was unable to attend.<sup>2</sup> The parties stated that they  
7 had not had discussions concerning the matter since the Procedural Order was issued. A recess was  
8 taken to allow the parties to engage in such discussions. After the recess, the parties indicated that  
9 GMWC would be ready to make its rate application filing by September 30, 2013; that Approvals to  
10 Construct had already been obtained; that Approvals of Construction could be obtained and submitted  
11 to the Commission by March 1, 2014; and that the parties disagreed concerning the maximum  
12 amount of financing GMWC should be authorized to obtain. Staff stated that from an engineering  
13 perspective, the parties agree that GMWC should be able to implement its proposed third option to  
14 address its inadequate water storage capacity, with modified compliance deadlines except as to the  
15 rate case application deadline. The parties reported that Mr. Barney needed to consult with Mr. Levie  
16 to determine what level of financing GMWC actually desires to obtain, and Mr. Barney stated that  
17 GMWC should be able to provide its position on the financing request within 10 days or so. Mr.  
18 Barney was advised that if the financing amount requested were greater than the \$181,320 amount  
19 previously authorized by the Commission, customer notice would be required, and a hearing would  
20 need to be held. Mr. Barney was also told that the Approvals to Construct need to be filed in the  
21 docket and that Mr. Levie needs to make a filing if he no longer intends to serve as GMWC's  
22 representative. Mr. Barney confirmed that the most recent deadline for the WIFA loan had passed,  
23 but stated that GMWC has filed a new application with WIFA, for a loan in the amount of  
24 approximately \$196,000, and that GMWC has been told by WIFA that GMWC just needs to get  
25 approval from the Commission to proceed with the loan. Mr. Barney stated that WIFA is just waiting

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26 <sup>2</sup> Mr. Barney was questioned so that it could be determined whether he would be qualified to represent GMWC as  
27 permitted under A.R.S. § 40-243 and Arizona Supreme Court Rule 31(d)(28). His responses indicated that he would be  
28 so qualified. Mr. Barney was told that Mr. Levie should have appeared on behalf of his client or requested in writing for  
the procedural conference to be rescheduled to a time when he could attend to represent GMWC. Mr. Barney indicated  
that he and Mr. Levie had believed they would just be meeting with Staff that morning.

1 for a Commission-approved financing amount and will then consider GMWC's application on  
2 WIFA's next hearing date. Staff indicated that it still questions whether GMWC could support a loan  
3 in an amount in excess of the \$181,320 amount previously approved by the Commission. Mr. Barney  
4 was directed to speak to Mr. Levie and to communicate with Staff as soon as possible about what  
5 financing authority GMWC now desires to obtain. It was determined that Staff would make a filing  
6 as soon as GMWC and Staff reached an understanding about GMWC's actual financing request.<sup>3</sup>  
7 Staff was directed to include in the filing an update of Staff's analysis of the financing requested,  
8 which could be as simple as a statement that Staff was standing by its analysis from a previous  
9 identified filing. Mr. Barney indicated that he understood and also indicated that he would have the  
10 Approvals to Construct filed.<sup>4</sup>

11 On September 30, 2013, GMWC filed a Request for Extension of Deadline ("Request"),  
12 requesting that it be granted an extension of the deadline to file its permanent rate case application,  
13 originally established in Decision No. 71869 and previously extended to September 30, 2013, in  
14 Decision No. 73155.<sup>5</sup> In its Request, GMWC stated that after further discussion with Staff regarding  
15 its financing approval request, and consultation with ARICOR Water Solutions, LLC, GMWC now  
16 understands that it is not yet prepared to file a rate case application. GMWC also stated that it now  
17 believes that "due to the expected requirements related to approval of its financing request,  
18 construction of facilities being financed will not be completed until June 30, 2014." GMWC  
19 described two alternate procedural schedules for its rate application and ultimately requested to have  
20 its rate case application deadline extended to December 31, 2014, and to use a test year ending no  
21 later than June 30, 2014.

22 Staff has not filed a response to GMWC's Request.

23 With its Request, GMWC again has amended its request for modifications to Commission

24 <sup>3</sup> Counsel for Staff volunteered to make the filing so that GMWC could avoid travel associated with a procedural  
25 conference.

26 <sup>4</sup> The Approvals to Construct have not yet been filed at this time.

27 <sup>5</sup> The deadline for GMWC's rate application was extended in Decision No. 73155, per GMWC's request, so as to be  
28 consistent with the anticipated filing deadline for a permanent rate case application to be filed by its sister utility, Chino  
Meadows Water Co, Inc., established in Decision No. 72896 (February 21, 2012). In Decision No. 72896, the  
Commission ordered as follows: "IT IS FURTHER ORDERED that in order to eliminate further disputes related to cost  
allocations, Chino Meadows II Water Company shall file its next general rate case using the same test year as is used in  
the next rate case for its sister utility, Granite Mountain Water Company, Inc."

1 Decisions under A.R.S. § 40-252. It is necessary to obtain Staff's response to that request. It also is  
2 still necessary for GMWC to decide on and precisely identify the financing authority for which it  
3 requests approval. GMWC has been informed of the different procedures that would be necessary to  
4 resolve its different possible financing requests, and it needs to choose its desired course and notify  
5 the Commission of that course so that Staff can analyze and respond to the request and the  
6 Commission can schedule the necessary proceedings to move forward and resolve the requests. To  
7 increase the likelihood that GMWC will not again change its requests, GMWC will be required to  
8 discuss its proposed financing request with Staff and to ensure that it is fully cognizant of Staff's  
9 position concerning that proposed financing before GMWC makes the filing identifying and  
10 requesting Commission approval for the proposed financing.

11 We note that in Decision No. 71869, the Commission considered whether an Order to Show  
12 Cause proceeding should be initiated to address GMWC's violations of Commission statutes and  
13 orders, which included a persistent pattern of failure to obtain prior Commission authorization for  
14 long-term debt (in spite of having been expressly ordered in several Commission Decisions not to  
15 obtain any loans or enter into any other financial arrangements without prior Commission  
16 authorization), failure to properly monitor meters on its system, and intentional provision of both free  
17 and discounted water to its owners' son and of free water for landscaping purposes to its owners'  
18 development. The Commission decided "to give GMWC an opportunity to demonstrate its intent to  
19 comply with the law by complying with [Decision No. 71869]." Among other things, the  
20 Commission expressly found that GMWC should be required to file a rate application within two  
21 years of the Decision so that the Commission could verify that GMWC had ceased its unauthorized  
22 and unlawful practice of giving free and discounted water to its owners' son and free water for  
23 landscaping purposes to its owners' development.

24 The Commission is again concerned about GMWC's commitment and ability to comply with  
25 Commission statutes, rules, Decisions, and orders. The delays in GMWC's filing of its rate case have  
26 prevented the Commission from being able to verify whether GMWC is complying with Decision  
27 No. 71869. Accordingly, we will require GMWC to determine, clarify, and finalize its position in  
28 this matter, as required below, by December 2, 2013.

1 IT IS THEREFORE ORDERED that **GMWC shall, between now and November 18, 2013,**  
2 **engage in discussions with Staff** regarding GMWC's proposed financing and its new extension  
3 request. The discussions shall be sufficient to result in Staff's being **fully informed** of the details  
4 regarding GMWC's proposed financing request and its new extension request and GMWC's being  
5 **fully cognizant** of Staff's position concerning GMWC's requests.

6 IT IS FURTHER ORDERED that **GMWC and Staff shall, either jointly or separately, by**  
7 **December 2, 2013, file documentation (1)** specifically identifying the proposed financing for which  
8 GMWC now seeks Commission approval; **(2)** setting forth Staff's analysis of and position on the  
9 proposed financing for which GMWC now seeks Commission approval; **(3)** specifically identifying  
10 GMWC's proposed deadline to file a permanent rate case application and the proposed test year for  
11 that rate case; **(4)** setting forth Staff's position on GMWC's proposed deadline to file a permanent  
12 rate case application and the proposed test year for that rate case; **(5)** including copies of the  
13 Approvals to Construct obtained for GMWC's Well No. 6 and 50,000-gallon storage tank project;  
14 and **(6)** setting forth a proposed procedural schedule, which shall include proposed dates for the  
15 provision of customer notice and for an evidentiary hearing if GMWC is requesting to have its  
16 financing authorization increased above \$181,320.

17 IT IS FURTHER ORDERED that **if Paul D. Levie no longer intends to serve as counsel** for  
18 GMWC, he shall make a filing to that effect. Mr. Levie is advised that **counsel for GMWC is**  
19 **expected to appear at each proceeding scheduled** in this docket.

20 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
21 31, 38, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

22 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
23 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona  
24 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings  
25 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for  
26 discussion, unless counsel has previously been granted permission to withdraw by the Administrative  
27 Law Judge or the Commission.

28 ...

1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
2 Communications) continues to apply to this proceeding and shall remain in effect until the  
3 Commission's Decision in this matter is final and non-appealable.

4 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
5 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
6 hearing.

7 DATED this 18th day of October, 2013.

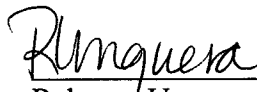
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10   
11 SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered/faxed/e-mailed  
this 18th day of October, 2013, to:

13 Paul D. Levie  
14 Arden W. Barney  
15 GRANITE MOUNTAIN WATER  
16 COMPANY, INC.  
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